

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Greg Finch	Team: Squad #14	CCRB Case #: 201700929	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Friday, 01/27/2017 8:43 PM	Location of Incident: In front of § 87(2)(b)	Precinct: 77	18 Mo. SOL 7/27/2018	EO SOL 7/27/2018	
Date/Time CV Reported Fri, 02/03/2017 4:30 PM	CV Reported At: CCRB	How CV Reported: In-person	Date/Time Received at CCRB Mon, 02/06/2017 11:39 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Andrew Tofalli	26431	955584	077 PCT
2. POM Brian Doyle	2068	954752	077 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Andrew Tofalli	Force: Police Officer Andrew Tofalli used physical force against § 87(2)(b)	§ 87(2)(b)
B.POM Brian Doyle	Force: Police Officer Brian Doyle used physical force against § 87(2)(b)	§ 87(2)(b)

Case Summary

On February 3, 2017, § 87(2)(b) filed this complaint in-person at the CCRB.

On January 27, 2017, at approximately 8:43 p.m., § 87(2)(b) had returned from a block party where he had consumed an unspecified amount of alcohol. § 87(2)(b) was waiting for his friends, § 87(2)(b) and § 87(2)(b) who he had plans to drive home. He was seated in the driver seat of his minivan parked at a hydrant in front of § 87(2)(b) in Brooklyn. § 87(2)(b) exited the minivan as Police Officer Brian Doyle and Police Officer Andrew Tofalli, both from the 77th Precinct, exited an unmarked RMP and approached. PO Tofalli spoke with § 87(2)(b) and allegedly pushed him against the minivan (**Allegation A**). PO Doyle allegedly kicked § 87(2)(b) twice in the groin (**Allegation B**). § 87(2)(b) fell to the ground, and the officers handcuffed him.

§ 87(2)(b) was transported to the 77th Precinct stationhouse, and then transported to

§ 87(2)(b) § 87(2)(b) was arrested for § 87(2)(b)

§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

This case has video evidence, a SnagIt copy of which has been placed below. Please note that the original video can be found at Board Review 16 and the transcript of that video can be found at Board Review 17. Although the video quality is grainy, it depicts the moment at which § 87(2)(b) alleges PO Tofalli pushed him into the minivan and indicates that this did not happen. The video further depicts § 87(2)(b) struggling with the officers for approximately 15 seconds after he exits the minivan.

§ 87(2)(b) surveillance video excerpt (55 seconds long):

Note: It is recommended the video footage is not viewed in fullscreen mode for improved clarity.



201700929_20170714_1215_DM.mp4

§ 87(2)(g)

Mediation, Civil and Criminal Histories

- This case was not eligible for mediation.
- A Notice of Claim was filed with the NYC Comptroller's Office regarding this incident on § 87(2)(b) (Board Review 02), and a 50-H hearing was held on § 87(2)(b) (Board Review 18). The 50-H transcript will be added to the casefile upon receipt.
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Civilian and Officer CCRB Histories

- This is § 87(2)(b)'s first CCRB complaint (Board Review 04).
- PO Doyle has been a member of the NYPD for four years and has three prior CCRB complaints containing a total of eight allegations, none of which were substantiated. § 87(2)(g)
- PO Tofalli has been a member of the NYPD for four years and has no prior CCRB complaints.

Potential Issues

§ 87(2)(b) a third witness to this incident, was unavailable to the investigation (see IAs for contact attempts).

Findings and Recommendations

Allegation A – Police Officer Andrew Tofalli used physical force against § 87(2)(b)

§ 87(2)(b) said that he independently exited the drivers side of the minivan before he was approached by PO Tofalli and PO Doyle (Board Review 05). On the street, PO Tofalli allegedly immediately pushed § 87(2)(b)'s left shoulder, causing § 87(2)(b)'s back to make contact with the closed rear passenger door, but resulting in no injury. § 87(2)(b) denied resisting PO Tofalli and PO Doyle during this incident.

§ 87(2)(b) who was present and in a position to witness this portion of the incident, did not observe any physical interaction between PO Tofalli and § 87(2)(b) (Board Review 06).

§ 87(2)(b) said that PO Tofalli pushed § 87(2)(b) against the hood of a car, and that § 87(2)(b)'s back made contact with the vehicle (Board Review 07). When asked during his CCRB interview if § 87(2)(b) resisted the officers, § 87(2)(b) said PO Doyle and PO Tofalli “had to wrangle him.”

PO Tofalli said that after smelling an odor of alcohol in § 87(2)(b)'s minivan, he ordered § 87(2)(b) “Step out of the vehicle, you’re under arrest” (Board Review 08). § 87(2)(b) refused to exit the minivan, and PO Tofalli and PO Doyle pulled § 87(2)(b) from the driver seat. PO Tofalli did not shove § 87(2)(b) against the minivan during the struggle to handcuff him, and § 87(2)(b)'s back did not make contact with the minivan. PO Doyle’s account largely corroborates PO Tofalli’s (Board Review 09).

The video footage indicates that § 87(2)(b) did not independently exit the minivan and that he did resist PO Tofalli and PO Doyle as they attempted to handcuff him (Board Review 10). The video footage is consistent with the officers’ account that § 87(2)(b) was physically removed from the minivan and struggled with officers as they attempted to handcuff him. It does not show PO Tofalli, the officer visible next to the minivan driver side door beginning at the 00:05 mark, taking a stance consistent with a push at any time during the 15 second struggle. Additionally, the back door § 87(2)(b) alleged to have been struck against is visible throughout the struggle, yet he never makes contact with the door.

§ 87(2)(g)

Allegation B – Police Officer Brian Doyle used physical force against § 87(2)(b)

§ 87(2)(b) alleged that PO Doyle kicked him twice in the groin before he was handcuffed (Board Review 05). § 87(2)(b) denied resisting arrest during this incident. Later that evening, § 87(2)(b) was transported to § 87(2)(b). § 87(2)(b) complained of groin pain, reported gross hematuria (blood in the urine) and suffered from a ruptured testicle (Board Review 11; Board Review 12; see medical records).

§ 87(2)(b) said that PO Doyle struck § 87(2)(b)'s groin twice with his knee (Board Review 06). § 87(2)(b) said, “I’m in pain, you kicked me, you kicked me in the seeds!” § 87(2)(b) did not observe any physical contact between PO Tofalli, PO Doyle and § 87(2)(b) beyond the two knee stuns.

§ 87(2)(b) said that PO Doyle and PO Tofalli attempted to handcuff § 87(2)(b) as he screamed (Board Review 07). When asked if § 87(2)(b) resisted the officers, § 87(2)(b)

said PO Doyle and PO Tofalli “had to wrangle him.” After the officers pushed § 87(2)(b) to the ground, PO Doyle kicked § 87(2)(b) twice in the groin. § 87(2)(b) said, “You kicked me in the groin, man.”

PO Doyle and PO Tofalli had previously interacted with § 87(2)(b) at an earlier date when PO Tofalli issued § 87(2)(b) a summons for § 87(2)(b) (Board Review 13). PO Tofalli said that § 87(2)(b) was not agitated during that incident (Board Review 08).

PO Doyle said that during this incident, PO Tofalli grabbed § 87(2)(b)'s hand as he sat in the driver seat, and § 87(2)(b) smacked PO Tofalli's hand away (Board Review 09). PO Tofalli told § 87(2)(b) “You're under arrest. Please step out.” PO Tofalli and PO Doyle grabbed § 87(2)(b) to remove him from the driver seat, and each officer grabbed § 87(2)(b)'s arms to place him in handcuffs. § 87(2)(b) twisted his torso and stiffened his arms, and PO Tofalli lost grip of § 87(2)(b)'s left arm. PO Doyle inflicted one “knee stun” to § 87(2)(b)'s upper thigh because he was resisting arrest. PO Doyle used a knee stun based on his training in tactics at the NYPD Academy, which CTS indicates he attended in 2013. § 87(2)(b)'s legs buckled, he fell to the ground and his body went limp. When asked if PO Doyle struck § 87(2)(b)'s genitals with his knee, PO Doyle said, “I don't know.” When asked if § 87(2)(b) complained of being kicked in the ‘seeds,’ PO Doyle said, “He may have said seeds, but it was hard to understand when he was screaming in pain.” At the 77th Precinct stationhouse, PO Tofalli called an ambulance for § 87(2)(b) for his complaint of pain.

PO Tofalli's account largely corroborates that of PO Doyle's. PO Tofalli said that after PO Doyle used the knee stun, § 87(2)(b) screamed in pain, “My seed, my seed!” At § 87(2)(b) § 87(2)(b) told nurses that an officer “kneaded him in the nuts” and that his testicle was injured and in pain.

The video footage indicates that § 87(2)(b) did resist PO Doyle's and PO Tofalli's attempts to handcuff him, and that PO Doyle used one knee stun against § 87(2)(b) not two as alleged. The video footage is consistent with the officers' accounts that § 87(2)(b) resisted being handcuffed before PO Doyle used a single knee stun against § 87(2)(b). However, the video does not clearly show § 87(2)(b)'s level of resistance outside the minivan, if § 87(2)(b) smacked PO Tofalli's hand as the officers alleged or if PO Tofalli lost his grip of § 87(2)(b)'s arm while attempting to place him in custody.

Force may be used when it is reasonable to place a person into custody, and any application of force must be reasonable under the circumstances. NYPD Patrol Guide, Section 221-01 (Board Review 14). A knee stun is a defensive tactic that can be used in close quarter confrontations against a subject's thigh, lower abdomen or groin. An escalation in the level of force used will be based on the effectiveness of the kick and the threat level of a subject. NYPD Defensive Tactics, Basic Striking and Kicking Techniques, July 2013 (Board Review 15).

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g) [Redacted]
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Squad:

Investigator:	_____ Signature	_____ Print	_____ Date
Squad Leader:	_____ Title/Signature	_____ Print	_____ Date
Reviewer:	_____ Title/Signature	_____ Print	_____ Date